IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3831 OF 2005

Mr.Ashok Nanji Rathod ...Applicant

Vs.

The State of Maharashtra ...Respondent

Shri. M.K.Kocharekar for the Applicant.
Shri. R.Y.Mirza A.P.P. for the Respondent.
Shri. T.A.Thakur for the Intervener.

CORAM : A. S. OKA, J.
DATED : JUNE 30, 2005.

P.C.:
1. Heard Advocate appearing for the Applicant, learned A.P.P. for the State and learned Advocate appearing for the Intervener Ambrishsingh Ganga singh Thakur.

2. By order dated 19th January, 2005 passed by the learned Additional Sessions Judge, Mumbai, the Applicant was ordered to be enlarged on bail. In Criminal Application No.438 of 2005 filed by the Intervener herein, this Court by Judgment and Order dated 10th February, 2005 cancelled the bail granted in favour of the Applicant. One of the grounds on which bail was cancelled is that the Applicant was ordered to be enlarged on bail although investigation was still in progress. In paragraph No.6 of the said

order this Court observed thus:

> "6. Indeed, the last reason can be said to be relevant for considering bail application, but before that, the Court ought to have considered that investigation was still in progress and also the seriousness of the offence, in that the Applicant has been named as accused along with the other accused for falsification of affidavit and power of attorney in the name of Chandu Nanji Rathod, who was in custody at the relevant time. As investigation regarding the allegations of fabrication of the documents, was still in progress, as is stated by the learned A.P.P. and the offence for which the Respondent is being tried is punishable with life imprisonment; and that the natur of accusation and prima facie view already expressed by the Judge of the same Court on the Civil Side on the basis of evidence, all those aspects have not been take into account, though relevant. (See the observations of the Apex Court in the case reported in (2004) 7 S.C.C. 521-State of Maharashtra V. Sitaram Popat Vetal and another)"

In paragraph No.8 of the said order this Court observed thus:

> "8. The Respondent No.1 to surrender before the concerned Court on or before 15th February 2005, who in turn, will consider fresh application for bail, if filed, on its own merits in accordance with law."

3. On plain reading of the said order, it appears that after the Applicant surrendered before the concerned court, his fresh Application for bail was required to be considered on its own merits. After surrendering, the Applicant made

application for bail which has been rejected by the order dated 13th April, 2005. The said Application was filed admittedly after the chargesheet was filed. The first paragraph of the order of the learned Additional Sessions Judge records the facts of the case. In the second and third paragraph the learned Judge has noted the submissions made before him. Paragraph No.3 of the said order reads thus:

"3. A.P.P. Shri. Bankar for State strongly opposed the B.A. on the ground that offence is serious one. Applicant tried to mislead the court on the basis of false and fabricated documents and therefore, he shouldnot be released on bail. It is required to be noted that order for granting bail passed by this court was set aside by the Hon'ble High Court on 10th February 2005. Observations in the said order goes to show that offence is serious one. It is further observed that in spite of serious allegations, this court had granted bail and taking into consideration the facts and circumstances of th case, Hon'ble High Court rejected the bail application. His Lordships have observed in the said order that though the documents are taken charge of by the police, still that cannot be a ground to grant the bail to the applicant."

In paragraph No.4 the learned Judge has observed thus:

"4. In the present case, to my mind, though the investigation is over and chargesheet is filed, that cannot be treated as change in circumstance for granting bail because this applicant produced false and fabricated documents in court

proceedings and tried to mislead the court and tried to snatch the orders on the basis of said documents. Therefore, to my mind, this is not a fit case to grant bail to this applicant even though the investigation is over."

4. This court while cancelling the bail granted in favour of the Applicant directed that the fresh Application for bail which may be made by the Applicant shall be considered on its own merits. The perusal of the order of the learned Judge shows that merits of the bail Application have not been considered. The learned Judge has declined to consider the merits of the Application by observing that though the investigation was over and the chargesheet was filed, that cannot be treated as a change in circumstance because the Applicant has allegedly produced false and fabricated documents in the Court proceedings. In my view, the approach of the learned Additional Sessions Judge was erroneous. It appears that the learned Judge has not considered the Application for bail on merits.

5. Faced with this situation the Counsel appearing for the partis stated that order dated 13th April, 2005 be quashed and set aside and learned Additional Sessions Judge be directed to

hear the Application afresh on merits.

6. Hence, I pass the following order:

: O R D E R :

i) The order dated 13th April, 2005 passed by the learned Additional Sessions Judge, Greater Mumbai, is quashed and set aside and Bail Application NO.719 of 2005 is restored.

ii) The learned Judge will decide the said Bail Application afresh in the light of the observations made in this order within a period of three weeks from the date of production of authenticated copy of this order.

iii) All contentions of the parties on mertis are kept open.

iv) Parties and concerned court to act upon an authenticated copy of this order.

JUDGE